

AMENDED IN SENATE JULY 1, 1996

AMENDED IN SENATE JUNE 13, 1996

AMENDED IN ASSEMBLY MAY 24, 1996

AMENDED IN ASSEMBLY MARCH 28, 1996

AMENDED IN ASSEMBLY MARCH 7, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 1985

Introduced by Assembly Member Speier

(Principal coauthor: Senator Leslie)

**(Coauthors: Assembly Members Alpert, Baldwin, Conroy,
Cortese, Gallegos, Harvey, Hawkins, Katz, Machado,
Margett, Willard Murray, Rainey, Sweeney, and Woods)**

(Coauthors: Senators Ayala, Leonard, O'Connell, and
Petriss)

January 3, 1996

~~An act to amend Sections 191.5, 193, 193.5, 667, and 1192.7 of the Penal Code, and to amend Sections 2800.3, 20001, 23104, and 23190 of, to add Section 23180.5 to, to repeal Section 23185 of, the Vehicle Code, and to amend Section 2 of Proposition 184, relating to driving under the influence, and declaring the urgency thereof, to take effect immediately. An act to amend Sections 191.5 and 1192.8 of the Penal Code, and to amend Section 20001 of the Vehicle Code, relating to driving under the influence.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1985, as amended, Speier. Driving under the influence: reckless driving.

(1) Under existing law, gross vehicular manslaughter while intoxicated is punishable by imprisonment in the state prison for 4, 6, or 10 years.

~~This bill would provide that if it is charged and admitted or found to be true that the defendant fled the scene of this crime, upon conviction for the crime, the defendant a person convicted of gross vehicular manslaughter while intoxicated who has one or more prior convictions of vehicular manslaughter or multiple prior convictions of driving under the influence shall receive an additional sentence of 5 years be punished by imprisonment in the state prison for a term of 15 years to life. The bill also would provide that if the defendant has one or more separate violations of an offense involving driving under the influence, which resulted in a conviction, he or she shall receive an additional sentence of 2 years in the state prison for each prior conviction. The bill would provide that probation shall not be granted nor shall the imposition or execution of sentence be suspended for that offense.~~

~~(2) Under existing law, vehicular manslaughter with gross negligence, or without gross negligence while under the influence, or manslaughter committed during the operation of a vessel, is punishable by imprisonment in a county jail or in the state prison.~~

~~This bill would eliminate punishment by imprisonment in a county jail for those crimes. The bill would further provide that if it is charged and admitted or found to be true that the defendant fled the scene of any of those crimes, upon conviction for the crime, he or she shall receive an additional sentence of 5 years in the state prison. The bill would provide that probation shall not be granted nor shall the imposition or execution of sentence be suspended for those offenses.~~

~~(3) Existing law, amended by initiative statute, provides for an enhanced punishment for persons who are convicted of a felony who have one or more prior violent or serious felony convictions. That law specifically incorporates the definitions of "violent felony" and "serious felony" as they existed on June 30, 1993. Another existing law, added by~~

~~another initiative statute, defines “serious felony” for those purposes. Both initiative statutes provide that any amendment of their provisions by the Legislature shall require a $\frac{2}{3}$ vote of the membership of each house.~~

~~This bill would add to the list of crimes that are considered serious felonies gross vehicular manslaughter, vehicular manslaughter with gross negligence, or while under the influence without gross negligence, manslaughter committed during the operation of a vessel, driving under the influence and causing bodily injury under specified circumstances, or those crimes specified in (4) below. This bill would change the reference to the definitions of violent and serious felonies to apply to those definitions as of January 1, 1997. Because it would amend an initiative statute, the bill would require a $\frac{2}{3}$ vote.~~

~~(4) Existing law requires the driver of any vehicle involved in an accident resulting in injury or death to another person to stop and exchange specified information with the other drivers involved. Under existing law, the punishment for a person who is convicted of willfully fleeing or attempting to elude a pursuing peace officer and thereby causing death or serious bodily injury to any person, or for a person convicted of reckless driving which causes great bodily injury who previously has been convicted of reckless driving or driving under the influence, is imprisonment in the state prison or in a county jail for not more than one year, or by a fine or both the fine and imprisonment.~~

~~This bill would eliminate punishment by imprisonment in a county jail for those crimes, thereby making those crimes felonies. The bill would provide that probation shall not be granted nor shall the imposition or execution of sentence be suspended for those offenses.~~

~~(5) Under existing law, the punishment for a conviction of driving under the influence and causing bodily injury is imprisonment in the state prison or in a county jail and by a fine. Under existing law, any person who personally inflicts great bodily injury on any person other than an accomplice in the commission or attempted commission of a felony, shall be punished by an additional term of imprisonment of 3 years, except as specified. If that injury causes the victim to become~~

~~comatose or the victim is 70 years of age or older, existing law prescribes an additional term of 5 years. If the injury is inflicted under circumstances involving domestic violence, the additional term is 3, 4, or 5 years.~~

~~This bill would provide that any person who personally inflicts great bodily injury on a person while driving under the influence shall be punished according to the above provisions, for each victim whose injury qualifies under the above provisions. The bill would provide that probation shall not be granted nor shall the execution or imposition of sentence be suspended for a conviction of that offense.~~

~~(6) Under existing law, if a person who is convicted of driving under the influence and causing bodily injury previously has been convicted of a separate violation of that offense or other offenses involving driving under the influence within 7 years, the person shall be punished by imprisonment in the state prison or in a county jail and by a fine. If the person previously has been convicted of 2 or more separate violations of that offense or other offenses involving driving under the influence within 7 years, the punishment is imprisonment in the state prison for 2, 3, or 4 years and by a fine.~~

~~This bill would provide that if a person has one or more separate violations of any of those offenses within any time period, which resulted in convictions, he or she shall be punished by a term of 4, 6, or 8 years and by a fine. The bill would provide that probation shall not be granted nor shall the imposition or execution of sentence be suspended for that offense.~~

~~(7)~~

~~(2) Existing law, added by initiative statute, defines "serious felony" for purposes of prohibiting plea bargaining in specified cases, except under specified circumstances.~~

~~This bill would provide that a "serious felony" also includes the offenses of gross vehicular manslaughter while intoxicated, vehicular manslaughter under certain circumstances, fleeing a peace officer and causing serious bodily injury or death, reckless driving that causes great bodily injury, and driving under the influence, when those offenses involve the personal infliction of great bodily injury.~~

The bill would state the intent of the Legislature to codify specified case law that includes those crimes within the definition of “serious felony.”

(3) Existing law requires the driver of any vehicle involved in an accident resulting in injury or death to another person to stop and exchange specified information with the other drivers involved. Under existing law, the punishment for a person who is convicted of willfully fleeing or attempting to elude a pursuing peace officer and thereby causing death or serious bodily injury to any person, or for a person convicted of reckless driving which causes great bodily injury who previously has been convicted of reckless driving or driving under the influence, is imprisonment in a county jail for not more than one year or in the state prison, a fine, or both that fine and imprisonment.

This bill would provide that any person who flees the scene of the crime after committing any of the above offenses shall be punished, in addition to the punishment prescribed, by imprisonment in the state prison for an additional 5 years.

(4) Because the bill would increase the penalties for several crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~*(8) This bill would declare that it is to take effect immediately as an urgency statute.*~~

Vote: $\frac{2}{3}$ majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited
2 as “Courtney’s Law,” in memory of Courtney Cheney of
3 Roseville, who was killed by a drunken driver with a long
4 history of driving under the influence.

5 ~~SEC. 2. Section 191.5 of the Penal Code is amended to~~

1 *SEC. 2. Section 191.5 of the Penal Code is amended to*
2 *read:*

3 191.5. (a) Gross vehicular manslaughter while
4 intoxicated is the unlawful killing of a human being
5 without malice aforethought, in the driving of a vehicle,
6 where the driving was in violation of Section 23140, 23152,
7 or 23153 of the Vehicle Code, and the killing was either
8 the proximate result of the commission of an unlawful act,
9 not amounting to a felony, and with gross negligence, or
10 the proximate result of the commission of a lawful act
11 which might produce death, in an unlawful manner, and
12 with gross negligence.

13 (b) Gross vehicular manslaughter while intoxicated
14 also includes operating a vessel in violation of subdivision
15 (b), (c), (d), (e), or (f) of Section 655 of the Harbors and
16 Navigation Code, and in the commission of an unlawful
17 act, not amounting to felony, and with gross negligence;
18 or operating a vessel in violation of subdivision (b), (c),
19 (d), (e), or (f) of Section 655 of the Harbors and
20 Navigation Code, and in the commission of a lawful act
21 which might produce death, in an unlawful manner, and
22 with gross negligence.

23 (c) Gross vehicular manslaughter while intoxicated is
24 punishable by imprisonment in the state prison for 4, 6,
25 or 10 years.

26 (d) *Any person convicted of violating this section who*
27 *has one or more prior convictions of this section or of*
28 *paragraph (1) or (3) of subdivision (c) of Section 192,*
29 *subdivision (a) or (c) of Section 192.5, or Section 23165,*
30 *23170, or 23175 of the Vehicle Code, shall be punished by*
31 *imprisonment in the state prison for a term of 15 years to*
32 *life. Except as provided in subdivision (b), Article 2.5*
33 *(commencing with Section 2930) of Chapter 7 of Title 1*
34 *of Part 3 shall apply to reduce the term imposed pursuant*
35 *to this subdivision.*

36 (e) This section shall not be construed as prohibiting
37 or precluding a charge of murder under Section 188 upon
38 facts exhibiting wantonness and a conscious disregard for
39 life to support a finding of implied malice, or upon facts
40 showing malice consistent with the holding of the

1 California Supreme Court in *People v. Watson*, 30 Cal. 3d
2 290.

3 ~~(e)~~

4 (f) This section shall not be construed as making any
5 homicide in the driving of a vehicle or the operation of a
6 vessel punishable which is not a proximate result of the
7 commission of an unlawful act, not amounting to felony,
8 or of the commission of a lawful act which might produce
9 death, in an unlawful manner.

10 SEC. 3. Section 1192.8 of the Penal Code is amended
11 to read:

12 1192.8. (a) For purposes of subdivision (c) of Section
13 1192.7, “serious felony” also means any violation of
14 Section 288.5.

15 (b) For purposes of subdivision (c) of Section 1192.7,
16 “serious felony” also means any violation of Section 191.5,
17 paragraph (1) or (3) of subdivision (c) of Section 192,
18 paragraph (a) or (c) of Section 192.5 of this code, or
19 Section 2800.3, subdivision (b) of Section 23104, or Section
20 23153 of the Vehicle Code, when the offense involves the
21 personal infliction of great bodily injury to a person other
22 than the defendant.

23 (c) It is the intent of the Legislature, in enacting
24 subdivision (b), to codify the court decisions of *People v.*
25 *Gonzales*, 29 Cal. App. 4th 1684, and *People v. Bow*, 13 Cal.
26 App. 4th 1551, and to clarify that the crimes specified in
27 subdivision (b) have always been, and continue to be,
28 serious felonies within the meaning of subdivision (c) of
29 Section 1192.7.

30 SEC. 4. Section 20001 of the Vehicle Code is amended
31 to read:

32 20001. (a) The driver of any vehicle involved in an
33 accident resulting in injury to any person, other than
34 himself or herself, or in death of any person shall
35 immediately stop the vehicle at the scene of the accident
36 and shall fulfill the requirements of Sections 20003 and
37 20004.

38 (b) (1) Except as provided in paragraph (2), any
39 violation of subdivision (a) shall be punished by
40 imprisonment in the state prison, or in the county jail for

1 not more than one year, or by a fine of not less than one
2 thousand dollars (\$1,000) nor more than ten thousand
3 dollars (\$10,000), or by both fine and imprisonment.

4 (2) Any violation of subdivision (a) which results in
5 death or permanent, serious injury shall be punished by
6 imprisonment in the state prison for two, three, or four
7 years, or in the county jail for not less than 90 days nor
8 more than one year, or by a fine of not less than one
9 thousand dollars (\$1,000) nor more than ten thousand
10 dollars (\$10,000), or by both fine and imprisonment.
11 However, the court may, in the interests of justice and for
12 reasons stated in the record, reduce or eliminate the
13 minimum imprisonment required by this paragraph.

14 As used in this paragraph, “permanent, serious injury”
15 means loss or permanent impairment of function of any
16 bodily member or organ.

17 (3) In imposing the minimum fine required by this
18 subdivision, the court shall take into consideration the
19 defendant’s ability to pay the fine and may, in the
20 interests of justice and for reasons stated in the record,
21 reduce the amount of that minimum fine to less than the
22 amount otherwise required by this subdivision.

23 *(c) A person who flees the scene of the crime after*
24 *committing a violation of Section 191.5, paragraph (1) or*
25 *(3) of subdivision (c) of Section 192, or subdivision (a) or*
26 *(c) of Section 192.5 shall be punished, in addition and*
27 *consecutive to the punishment prescribed for violating*
28 *this section, by an additional term of imprisonment of five*
29 *years in the state prison. That additional term shall not be*
30 *imposed unless the allegation is charged in the accusatory*
31 *pleading and admitted by the defendant or found to be*
32 *true by the trier of fact. The court shall not strike a finding*
33 *that brings a person within the provisions of this*
34 *subdivision or an allegation made pursuant to this*
35 *subdivision.*

36 *SEC. 5. No reimbursement is required by this act*
37 *pursuant to Section 6 of Article XIII B of the California*
38 *Constitution because the only costs that may be incurred*
39 *by a local agency or school district will be incurred*
40 *because this act creates a new crime or infraction,*

1 *eliminates a crime or infraction, or changes the penalty*
2 *for a crime or infraction, within the meaning of Section*
3 *17556 of the Government Code, or changes the definition*
4 *of a crime within the meaning of Section 6 of Article*
5 *XIII B of the California Constitution.*

6 *Notwithstanding Section 17580 of the Government*
7 *Code, unless otherwise specified, the provisions of this act*
8 *shall become operative on the same date that the act*
9 *takes effect pursuant to the California Constitution.*

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**All matter omitted in this version of the
bill appears in the bill as amended in the
Senate, June 13, 1996 (JR 11)**